No. 203.

Br. of White for D. C.

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CONSTITUTIONALITY OF BANKRUPT ACT.

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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 203.

THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MAX MOYSES, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

BRIEF ON BEHALF OF THE DEFENDANT IN ERROR.

GEO. T. WHITE,
FRANCIS MARTIN,
For Defendant in Error.

MACDOWELL & COOKE CO., PRINTERS, CHATTANOOGA.

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RE-STATEMENT OF THE PLAINTIFF'S CLAIMS.

The errors assigned on behalf of the Plaintiff in Error are, to quote the exact language of the assignment, "That the alleged discharge under the Act of Congress entitled 'An Act to establish a uniform system of bankruptcies throughout the United States,' approved July 1st, 1898, is a nullity because:

"1. Said Act violates the fifth amendment of the Constitution of the United States in this that

(a) "It does not provide for notice as required by due process of law to the creditor in voluntary

proceedings for adjudication of bankruptcy and for discharge of the debt of the creditor.

(b) "Ten days notice by mail to creditors to oppose discharge is so unreasonably short as to be a denial of notice.

(c) "The grounds of opposition to a discharge are so unreasonably limited as substantially to deny the right of opposition to a discharge. Thereby the act is also practically a legislative promulgation of the discharge contrary to Article 3, Section 1 of the Federal Constitution."

"2. Said Act violates Article 1, Section 8, Paragraph 4 of the Constitution in this that

(a) "It does not establish uniform laws on the subject of bankruptcy throughout the United States.

(b) "It delegates certain legislative powers to the several states in respect to bankruptcy proceedings.

(c) "It provides that other than traders may be adjudicated bankrupts, and that this may be done on voluntary petitions." (See Brief of Plaintiff in Error, pp. 3 and 4.)

REPLY TO PLAINTIFF'S BRIEF.

We propose, for the purpose of treating the subject more logically, and thereby shortening our discussion of the case, to consider plaintiff's assignments of error, not in the order in which they are stated, but in the reverse order.

We shall therefore first endeavor to show that even though the Bankruptcy Act of 1898 does provide that others than traders may be adjudicated bankrupts upon voluntary petitions; and even though it does leave certain matters subject to legislative action in the several States, nevertheless the Act does establish a uniform law on the subject of bank-

ruptcy throughout the United States; and that Congress in enacting it has not transcended the powers delegated by Paragraph 4 of Section 8, of article I of the Constitution of the United States. Afterwards we shall endeavor to show that the Act does not violate the fifth amendment to the Constitution of the United States.

I.

As to Whether the Bankruptcy Act of 1898 Violates Paragraph 4 of Section 8, Article 1 of the Constitution.

1st. Can Congress Constitutionally Provide for the Bankruptcy of Persons Who Are Not Traders?

It is claimed on behalf of the Plaintiff in Error that the word "bankruptcy" as used in the Federal Constitution was intended to have a limited signification and that the word "bankrupt" was used at the time the constitution was adopted exclusively for the purpose of designating fraudulent debtors *who were traders*, and that it was the intention of the Federal Convention of 1787, in giving to the Congress of the United States power "to establish uniform laws on the subject of bankruptcies throughout the United States," simply to clothe Congress with the power to enact laws which would apply exclusively to *traders or merchants who were insolvent*, and that it was not the intention of the Federal Convention to give Congress any authority whatever to pass laws which would apply to any other class of insolvent debtors.

This claim on the part of the Plaintiff in Error is based on an error of fact. The word "bankruptcy" is an ancient English word which had its origin during the reign of Queen Elizabeth and it has come down to us from that time, bearing all the way a meaning coextensive with "insolvency;" and it was undoubtedly considered as equivalent to "insolvency" in

1787 when the Federal Convention was in session (*Kunzler v. Cohaus*, 5 Hill N. Y., 520).

Judge Cowan in his exhaustive discussion of this subject in the case just cited shows clearly that the English lexicographers of the latter half of the eighteenth century, viz: Ash and Johnson defined *bankruptcy* as being synonymous with *insolvency*, and that that was the popular acceptation of the meaning of the word at the time the Federal Constitution was adopted.

The proceedings of the Federal Convention of 1787 do not in themselves throw any light upon the question as to the meaning which the Convention intended to give to the word "bankruptcy;" but certain events connected with the subsequent ratification of the Constitution show very clearly the sense in which the word "bankruptcy" was then used throughout the United States. The facts are briefly as follows:

In Mr. Madison's report of the debates of the Federal Convention of 1787 we find that on August 29th, 1787, Mr. Pinckney "moved to commit Article 16 with the proposition 'to establish uniform laws on the subject of bankruptcies.'" It was referred to a committee, of which Mr. Rutledge was chairman and which reported favorably on September 1st, 1787 (*Madison's papers*, Ed 1845, pp. 408 and 503.)

On September 3rd the clause was taken up for consideration. Only two members addressed the convention on the subject, and Mr. Madison's entire report of the discussion is as follows:

"Mr. Sherman observed that bankruptcies were in some cases punishable with death by the laws of England, and he did not choose to grant a power by which that might be done here."

"Mr. Gouverneur Morris said this was an extensive and delicate subject. He would agree to it because he saw no danger of the abuse of the power by the Legislature of the United States."

"On the question to agree to the clause Connecticut alone was in the negative." (The Madison papers, Ed. 1845, pp. 488-503-504.)

It thus appears that the clause whereby Congress was empowered "to establish uniform laws on the subject of bankruptcies throughout the United States" was inserted by the Federal Convention of 1787 into their draft of the Constitution almost without any discussion whatever, and that the proceedings of the convention do not, in themselves, throw any light upon what definition was intended to be given to the word "bankruptcies."

When, however, the Constitution was submitted to the various states of the old confederation for ratification, an incident occured which throws light directly upon the meaning which the people of the United States and the members of the Federal Convention gave to the word "bankruptcy."

In the Convention held in the State of New York in 1788 for the purpose of considering the question as to whether the Constitution proposed by the Federal Convention of 1787 should be ratified, it was proposed that an amendment should be added to the Constitution of the United States, restricting the power of Congress to the passage of bankruptcy laws which should extend only "to merchants and other traders," the States being allowed to pass laws for the relief of other insolvent debtors; and this proposition of the New York Convention was actually submitted by the State of New York to the First Congress of the United States. (1st *Elliott's Debates*, pp. 329 to 331.)

The resolution of the New York Convention proposing the above described amendment, shows conclusively that the members of that Convention knew positively that the word "bankruptcy" as used in the Constitution was intended to be co-extensive in signification with the word "insolvency." For it should be remembered that Alexander Hamilton, Robert Yates and John Lansing, who were members of the

Federal Convention of 1787, were also members of the New York Convention of 1788, which met for the purpose of considering the question as to whether or not New York should ratify the Constitution.

If it is true, as is now claimed by the Plaintiff in Error, that the word "bankrupt" had at that time but one meaning, viz: "an insolvent trader or merchant," it stands to reason that the New York Convention would not have wasted time in considering the proposition as to whether it was necessary to curtail the power of Congress to pass "Bankruptcy Acts;" nor would they have deliberately framed and submitted to the First Congress of the United States an amendment for the purpose of so modifying the Constitution of the United States as to give Congress authority to merely pass bankruptcy laws applicable "to merchants and traders," and give to the states the right to pass laws for the relief of other insolvent debtors.

Since the adoption of the Constitution of the United States the power therein granted to Congress on the subject of bankruptcies has been exercised four times. In the year 1800 Congress passed a Bankruptcy Act, which, by its own terms was limited to five years, but which was repealed in 1803. The power of Congress to pass this Act does not seem to have ever been questioned.

In 1841 the second Bankruptcy Act was passed by Congress. It provided that all persons whomsoever, residing in the United States, owing debts not contracted in a fiduciary capacity could have the benefit of the Act regardless of the fact as to whether such persons were merchants or traders, or not: although it could be enforced *at the instance of creditors only* against merchants, bankers, brokers, factors and underwriters. The Bankruptcy Act of 1841 was adopted as a result of the consideration given by Congress to the subject of bankruptcies after the introduction on April 1st, 1840, of a

bankruptcy bill in the Senate by Daniel Webster. The bill which he introduced was as broad in its general characteristics as the law which was finally enacted. In quick succession a large number of other bills on the same subject were introduced and for some time this question occupied a very prominent place, both in Congress and out of it (*2nd VonHolst's Con. His. of the U. S.* pp. 480–450).

Webster was in favor of extending the privilege of voluntary bankruptcy to all natural persons, regardless of whether they were merchants or traders.

Calhoun, at first, admitted that he was in favor of the contemplated measure, but subsequently claimed that closer consideration had convinced him of its unconstitutionality, because in the Constitution the word "bankrupt" should not be understood in the broader sense of every day language but in the narrower technical sense. He was undoubtedly led to this conclusion because as a State's rights man he naturally preferred the interpretation least favorable to the Federal power (2nd *VonHolst's Con. His. of U. S.*, pp 464 and 465; *Calhoun's Work*, vol. 3, p. 506).

The controversy which then arose between the "broad constructionists" represented by Webster on the one hand, and the "narrow constructionists," represented by Calhoun on the other, was bitterly waged from the time Webster first introduced his draft of a bankruptcy Act in 1840 until 1843, when the ~~third~~ Bankruptcy Act of 1841 was repealed. The controversy was again renewed in 1867 when the third Bankruptcy Act was passed by Congress; and is now raised again under the Act of 1898. The solutions of the question as to the meaning of the words "bankrupt" and "bankruptcy," which have been offered by the various learned statesmen and constitutional lawyers from the time of Webster to the present day have differed merely as the parties offering them were, on general principles, in favor of either a broad or

narrow construction of the Constitution of the United States. No authoritative final decision by the Supreme Court of the United States has ever been rendered; but it would seem that *the fact that the Congress of the United States has three* times in the last sixty years enacted bankruptcy laws (which have never been held unconstitutional) extending the rights of voluntary bankruptcy to all natural person, regardless of the question as to whether they were or were not either traders or merchants is a strong indication of a settled belief on the part of the people and their law makers that the Supreme court has tacitly adopted that construction of the Constitution which gives to Congress plenary authority over the subject of bankruptcies and defines the word "bankruptcy as being synonymous with the word "insolvency."

While the Supreme Court has never rendered any decision on this subject, the inferior Federal Courts have passed upon it, and with the exception of the case *In re Klein*, 2 N. Y Leg. Obs. 185, which was expressly overruled by the Circuit Court *In re Klein* 1st How. 277 Note, it has been uniformly held that "The Constitutional grant of power to establish uniform laws on the subject of bankruptcy is not limited to passing enactments similar in scope and operation to those in force in England when the Constitution was adopted. It gives Congress plenary power over the subject of bankruptcy; under one limitation only, that the laws passed upon that subject shall be uniform throughout the United States" (*Silverman's Case*, 2 Abb. U. S., 243; *In re Cal. Pac. R. Co.*, 3 Sawy, 240; *In re Reiman*, 7 Ben, 455; *U. S. v. Pusey*, 6 N. B. R. 284).

The decisions cited, it is true, are decisions relative to the Bankruptcy Acts of 1841 and 1867; but the Bankruptcy Act of 1898 is, in all its general provisions, identical with the Bankruptcy Acts of 1841 and 1867. That is the three acts are alike in that they extend the right of bankruptcy to

persons other than merchants and traders. Each act provides that the bankrupt shall be entitled to the exemptions prescribed by the laws of the State of his domicile. Each *provides for voluntary proceedings on the part of the debtor.* Each provides a general and uniform law for the entire United States; and each provides for an adjudication of bankruptcy, and for a final discharge of the debtor.

Therefore decisions as to the constitutionality of those provisions in the Acts of 1841 and 1867 are directly applicable to similar provisions in the Acts of 1898, and while we will not be able in this brief to cite any direct decisions of the Supreme court of the United States on the question in controversy we will cite hereafter, as we have already, many decisions of the inferior Federal courts which we submit are at least strong persuasive arguments in favor of the claims which we advocate.

2nd. Is the fact that the Act of 1898 expressly provides that the Bankrupt shall be entitled to the exemptions prescribed by the laws of the State in which he has his domicile, such a delegation of Legislative power as to render the Act unconstitutional?

This precise question came before the U. S. Circuit Court (District of Missouri) in 1870, while the Bankruptcy Act of 1867 was in force. It was shown that in some twelve States no homestead exemption existed, while in other States there was a great diversity as to the amount and value of the exempt homestead. It was contended that these exemptions not being uniform, fell within the inhibition of Section 8, Article I of the Constitution.

The Circuit Court (Justice Miller presiding) held that notwithstanding the fact that the law *operated* differently in different States, the *provisions* of the law were, nevertheless, *uniform*, and that the Act was constitutional.

The Court in deceiding the case said:

"It is obvious, from the language employed, that the uniformity here referred to was a uniformity among the States. If Congress saw cause to pass bankrupt laws under the grant of power above referred to, the injunction is that they shall be uniform throughout the United States. So far as the distribution of the bankrupt's assets—the point under consideration—is concerned, the law is uniform. When viewed with reference to the State exemption laws, there is a uniformity which, on reflection, readily suggests itself. Though the States vary in the extent of their exemptions, yet what remains the bankrupt law distributes equally among the creditors. Nor does the bankrupt law in any way vary or change the rights of the parties. All contracts are made with reference to existing laws, and no creditor could recover more from his debtor under the State laws than the unexempted part of his assets, the very thing that is attained by the bankrupt law, which, therefore, is strictly uniform." (*In re Beckerford*, 1 Dill. 45). To the same effect see (*In re Jordan*, 8 N. B. R. 180; *In re Smith*, 8 N. B. R. 401; *Darling v. Berry*, 13 Fed. Rep. 656).

3rd. Does the Act of 1898 establish "A uniform law on the subject of Bankruptcies throughout the United States," as required by Article I, Section 8, Paragraph 4 of the Constitution?

While the question as to whether the Bankruptcy Acts of 1841, 1867 and 1898 were uniform has never been adjudicated by the Supreme Court, the inferior Federal Courts have held that the Acts of 1867 and 1898 were uniform, and that what is meant by the Constitutional requirement that such laws shall be "uniform" is that they shall not prescribe one law for one State or section and a difierent law for another State or section. They have also held that the requirement of uniformity does not relate to the operation or working of the law in the different States or sections, and all that is required is that the law shall be general and uniform in its provisions. (*Darling v. Berry*, 13 Fed. Rep. 659; *Leidigh Carriage Co v. Stengel*, 95 Fed. Rep. 637).

II.

As to whether the Bankruptcy Act of 1898 violates the Fifth Amendment of the Constitution of the United States.

1st. The Bankruptcy Act of 1898 in providing for voluntary proceedings on the part of the Bankrupt does not violate the Fifth Amendment th the Constitution.

This precise question was raised as to the Bankruptcy Act of 1841; and the same objections were made to that Act that plaintiffs in error now make to this one. The U. S. District Court held the Act to be unconstitutional (*In re Klein*, 2 N. Y. Leg. Obs. 185).

But the U. S. District Court, (Justice Catron presiding), reversed the decision of the District Court and held that the spirit of the American law upon the subject of bankruptcies is radically at variance with that of the English. By the English law, only "a fraudulent trader, upon the *petition of his creditors*, could be a bankrupt. In America, any debtor, upon the petition of his creditors, or *upon his own petition*, may be a bankrupt. This latter was the construction given to bankruptcy in the states of the American Union before the adoption of the Federal Constitution.

In deciding this case Mr. Justice Catron said:

"Of this subject congress has general jurisdiction; and the true inquiry is, to what limits is that jurisdiction restricted? I hold it extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of congress. With the policy of a law, letting in all classes, others as well as traders, and permitting the bankrupt to come in *voluntarily*, and be discharged without the consent of his creditors, the courts have

no concern; it belongs to the law makers." (*In re Klein*, 1st How. U. S., 277 Note.)

Again, the same objection was made to the Bankruptcy Act of 1867. But the U. S. District Court held that the act was constitutional and that the power given to Congress must be held to be general, unlimited and unrestricted over the subject of bankruptcy, and that consequently Congress had a right to provide for *voluntary* proceedings on the part of the bankrupt. (*In re Reiman*, 7 Ben. 455; *Silverman's Case*, 2 Abb. 243; *In re Cal. Pac. R. R. Co.*, 3 Sawy. 240.)

2nd. The Bankruptcy Act of 1898 in providing for an adjudication of bankruptcy in voluntary Proceedings, without notice to the creditors, does not violate, the Fifth Amendment to the Constitution, by depriving the creditor of his property without "due process of law."

The Federal Constitution does not attempt to define what is the "due process of law" which is guaranteed by the Fifth Amendment; and the Federal courts have never attempted to give a *comprehensive* definition of the term (*Burton v. Platter*, 10th U. S. App. 675.)

It has been held, however in the State Courts that "due process of law" means legal proceedings according to the course of the common law; and that therefore, an act which takes away a right to sue at common law is not unconstitutional, if it prescribes a proceeding and remedy appropriate to the nature of the case. (*Newcomb v. Smith*, 1 Chand., Wis., 71; *Gilchrist v. Schmidling*, 12 Kan., 263; *Happy v. Mosher*, N. Y., 313.)

Again, it has been held that the guaranty that no person shall be deprived of life, liberty or property "without due process of law" does not mean that the legislature may not change, alter, or repeal any principle, rule, or law which was a part of the common law before the adoption of the Consti-

tution. (*Noonan v. State*, Smed. & M., Miss., 562).

The principle does not demand that the law existing at any point of time shall be irrepealable, or that any forms of remedies shall necessarily continue. (*Brown v. Board of Levee, Com.*, 50 Miss, 468).

The most satisfactory definition of the provision that no person "shall be deprived of life, liberty or property without *due process of law*," is that it secures to every one the right to have notice of any proceeding by which his rights of life liberty or property may be effected, and to be afforded an opportunity to defend, protect and enforce such rights in an orderly proceeding adapted to the nature of the case (*Holden v. Hardy*, 169 U. S., 366; *Davidson v. New Orleans*, 96 U. S., 97; *Iowa Cent. Co. v. Iowa*, 160 U. S., 389).

The question then is "Does the Bankruptcy Act of 1898 give to the creditors of the *voluntary bankrupt* sufficient notice of the proceeding by which their rights of property may be affected; and does it afford the creditors opportunity to defend, protect and enforce such rights in an orderly proceedings adapted to the nature of the case?"

In answering this question it is first necessary to analyze the general nature of a bankruptcy proceeding under the Act of 1898. Leaving out of consideration all minor points, and speaking broadly, it may be said that the proceeding in bankruptcy embraces two entirely different purposes:

1st. The bringing of the debtor's property into the custody of the court, for the purpose of ultimately selling it and distributing the proceeds among all his creditors; and

2nd. A discharge of the debtor (after that distribution is made) from all further liability for provable debts which existed at the date of the commencement of the bankruptcy proceedings.

The first of these purposes affects only the property of the *debtor*, and is technically a proceeding *in rem.* as has been

repeatedly decided by the Fedetal Courts. (*Shawban v. Whewitt*, 7 How. 627; *New Lamp Chimney Co. v. Brass and Copper Co.*,91 U. S. 561; *Graham v. Erie R. R. Co.*, 118 U. S. 170; *In re Wallace*, Deady's Rep. 433; *In re Banks*, 1 N. Y. Leg. Obs. 247; *Morse v. Godfrey*, 3 Story, 391).

The second affects the property rights of the *creditors*, and is to that extent a proceeding *in personam*.

The first purpose is accomplished by the action of the Judge of the Court of Bankruptcy in *adjudicating* that the voluntary petitioner is a bankrupt.

It is true that the Act does not provide that the creditors of a *voluntary* petitioner shall receive notice of the filing of the petition, nor are they given any opportunity *before the adjudication* is made, to contest the right of the petitioner to be declared a bankrupt. But as a matter of Constitutional right, are they entitled to any such notice? Clearly not; for the *adjudication of bankruptcy* does not affect any of the creditor' *rights of property*. Their right of property is a right to hold the debtor personally liable for the payment of the debts so long as he lives, and to subject to their payment all the assets that his skill and labor during that life may produce. It is the *discharge in bankruptcy* which sweeps away from the creditors this *right of property*.

The creditors are therefore entitled to a "sufficient notice" of the debtor's application for his *discharge*; and the act of 1898 provides for due and "sufficient notice" of that application and "affords the creditors an opportunity to defend, protect and enforce their property rights in an orderly proceeding adapted to the nature of the case," by permitting them to appear in court and contest the debtor's right to a *discharge*.

But the *adjudication of bankruptcy* does not affect the property rights of the creditor. It merely brings the debtor's property into the custody of the court for the purpose of ul-

timately selling it and distributing the proceeds among all his creditors.

This is a proceeding wholly *in rem* and it necessarily follows that actual notice to the creditors is not essential to the jurisdiction of the Court. (*Rayl v. Lapham*, 27 Ohio St. 452.)

3rd. The ten days' notice, by mail, to creditors, of the debtor's application for a discharge, as provided by the Act of 1898, is not so unreasonably short as to be a denial of notice.

When a debtor voluntarily files a petition in bankruptcy his action in so doing amounts to at least constructive notice to his creditors that he intends in due time to apply for a *discharge*.

The Act provides that the creditors shall be notified of the adjudication of bankruptcy and of the date of the first meeting of creditors. This notice must be sent at least ten days before the date fixed by the court for that meeting. (Sec. 55.)

The Act also provides that notice shall be given the creditors of all subsequent meetings of creditors, of all examinations of the bankrupt, of the filing of the final accounts of the trustee, and of the application for *discharge*. (Sec. 58.)

This application for a *discharge* cannot be filed by the debtor until after the expiration of one month subsequent to his being adjudged a bankrupt. (Sec. 14.)

Therefore even though the bankrupt should file his application at the earliest possible moment allowed by the act, his creditors would have had at least a month's notice of the fact that the debtor intended to apply for such discharge; and they could during that time inform themselves as to his assets, the truthfulness of the statements in the original peti-

tions and all other facts essential to contesting his right to a discharge.

Furthermore, the Act provides that any creditor who has not been guilty of undue laches, may, at any time within one year after the debtor has been discharged, have that discharge revoked, upon filing a petition, and proving that the discharge was obtained through any fraud of the bankrupt and that knowledge of the fraud has come to the petitioning creditor since the granting of the discharge, and that the actual facts did not warrant the discharge (Sec. 15).

It is therefore very evident that the notice of the application for the discharge, as provided for by the act is sufficient; and that the rights of creditors are amply protected.

4th. The Grounds of opposition to a discharge are not so unreasonably limited as, substantially, to deny the right of opposition to a discharge.

An examination of Sections 14 and 29 of the Act of 1898 shows conclusively that the grounds of opposition to a discharge are as numerous and as broad, as are compatible with the spirit and purpose of modern bankrupt laws, which are not framed solely for the benefit of selfish creditors, but are intended, on broad principles of humanity and public policy to relieve unfortunate debtors from the perpetual burden of their debts.

Moreover, the plaintiff has evidently overlooked two important facts relative to the Federal Constitution, viz., that the power of Congress on the subject of bankruptcies is plenary (*Silverman's Case*, 2 Abb. U. S., 243; *In re Cal. Pac. R. Co*, 3 Sawy, 240; *In re Reiman*, 7 Ben., 245); and that Congress in exercising that power has the right to pass a uniform bankruptcy act, *even though it may impair the obligation of a contract.* The first of these propositions we have already discussed in a preceding portion of this brief; the

second proposition has been definitely established by a decree of this Honorable Court (*New Orleans Water Works v. Louisiana Sugar Co.*, 125 U. S., 18).

It is therefore evident that Congress has the power to prescribe any reasonable regulations concerning discharge in bankruptcy; and that its action in the premises is conclusive.

In this connection we desire to call attention to plaintiff's claim that the Act of 1898 fails to provide as many grounds of opposition to the debtor's discharge in bankruptcy as did the earlier Acts, and on which subject it says:

"A material difference is to be noted in this Act and all the prior Acts. Under the Act of 1867 the grounds of opposition were very numerous and afforded the creditor opportunity to be heard. The Acts of 1800 and 1841, as shown supra, were even more favorable to the creditor, and afforded the creditor a hearing in the case on its merits. No such opportunity is given under the Act of 1898, and hence that Act is fatally defective therein." (See brief of Plaintiff in Error, p. 26).

But, as heretofore shown, there is no constitutional inhibition of the right of Congress to change, alter, or repeal any principle, rule, or law which was a part either of the common law before the adoption of the Constitution, or has become a part of the law by force of a Statute passed since the Constitution was adopted.

Were it otherwise there would be nothing to prevent plaintiff from going even farther back in its examination of obsolete laws and musty statutes, and insisting that the Act of 1898 is defective because it fails to extend to creditors that other right which had been given by early English laws, and which was referred to by Mr. Sherman in the Federal Convention of 1787, when the clause giving to Congress the power "to establish uniform laws on the subject of bankruptcies" was inserted in the Constitution, viz., the right of the creditor, under certain circumstances, to have his bank-

rupt debtor hanged, drawn and quartered, for his special satisfaction.

In other words, plaintiff's claim, on examination, is seen to contain an absurd fallacy.

In conclusion, we respectfully submit that the Bankruptcy Act of 1898 is, for the reasons hereinbefore set forth, valid and constitutional in every respect.

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